

TENTATIVE RULINGS

FOR: October 27, 2016

The Court may exercise its discretion to **disregard** a late filed paper in law and motion matters. (Cal. Rules of Court, rule 3.1300(d).)

Unlawful Detainer Cases – No tentative ruling will be posted because access to records is not permitted until 60 days after the complaint is filed. Parties **must appear** for all unlawful detainer demurrers, motions to quash, and other matters. After 60 days, tentative rulings will be posted in accordance with the local rules.

Court Reporting Services – The Court does not provide official court reporters in proceedings for which such services are not legally mandated. These proceedings include civil law and motion hearings. If counsel want their civil law and motion hearing reported, they must arrange for a private court reporter to be present. Go to <http://napacountybar.org/court-reporting-services/> for information about local private court reporters. Attorneys or parties must confer with each other to avoid having more than one court reporter present for the same hearing.

PROBATE CALENDAR – Hon. Diane Price, Dept. C (Historic Courthouse)

Conservatorship of Greta Minatre

26-67556

PETITION FOR ORDER DISPENSING WITH ACCOUNTINGS

TENTATIVE RULING: The Petition is GRANTED, so long as the estate continues to satisfy the conditions of Probate Code section 2628, subdivision (a).

.....

Conservatorship of Robert A. Johnstone

26-67608

PETITION FOR ORDER DISPENSING WITH ACCOUNTINGS

TENTATIVE RULING: The Petition is GRANTED, so long as the estate continues to satisfy the conditions of Probate Code section 2628, subdivision (a).

.....

Conservatorship of Knox, Kevin Douglas

PR22014

REVIEW HEARING

TENTATIVE RULING: Conservators are to file a Post-Move Notice of Change of Residence (Judicial Council form GC-080) with the court. After a review of the matter, the court finds the Conservators are acting in the best interest of the Conservatee. Based on the report of the court investigator, the court determines by clear and convincing evidence that Conservatee cannot communicate, with or without reasonable accommodation, a desire to participate in the voting

process, and therefore orders Conservatee disqualified from voting pursuant to Elections Code section 2208.

The case is set for a biennial review hearing in two years, on October 25, 2018 at 8:30 a.m. in Dept. F. The court investigator shall prepare a biennial investigator report for the next hearing date. The clerk is directed to send notice to the parties.

CIVIL LAW & MOTION CALENDAR – Hon. Diane Price, Dept. C (Historic Courthouse)

Terry Dal Porto, et al. v. Craig Dal Porto, et al.

26-65978

APPLICATION FOR AN ORDER STAYING ANY ARBITRATION

TENTATIVE RULING: Defendant/cross-complainant Craig Dal Porto's unopposed application for an order staying any arbitration demand by plaintiff/cross-defendant Terry Del Porto is GRANTED.

PROBATE CALENDAR – Hon. Rodney Stone, Dept. F (Criminal Courts Bldg.- 1111 Third St.)

Estate of Clifford G. Popple

16PR000172

PETITION FOR PROBATE OF WILL AND FOR LETTERS TESTAMENTARY AND AUTHORIZATION TO ADMINISTER UNDER THE INDEPENDENT ADMINISTRATION OF ESTATES ACT

TENTATIVE RULING: GRANT Petition.

.....
Conservatorship of Ovando, Hortensia

26-33383

PETITION FOR ORDER DISPENSING WITH ACCOUNTINGS

TENTATIVE RULING: The Petition is GRANTED, so long as the estate continues to satisfy the conditions of Probate Code section 2628, subdivision (a).

.....
Conservatorship of Josephine Thorson

26-67667

PETITION FOR ORDER DISPENSING WITH ACCOUNTINGS

TENTATIVE RULING: GRANT petition. Petitioner shall dispense with accountings as long as Probate Code section 2628, subdivision (b), is satisfied.

CIVIL LAW & MOTION CALENDAR – Hon. Rodney Stone, Dept. F (Criminal Courts Bldg.-1111 Third St.)

Jeffrey Cornell, et al. v. Christopher Joseph Frassetto, et al.

26-63319

1) CROSS-DEFENDANT LYNN FEINGOLD MICHALSKI'S MOTION FOR DETERMINATION OF GOOD FAITH SETTLEMENT

TENTATIVE RULING: The unopposed Motion is GRANTED. The settlement reached, which includes a proposed payment of \$5,000, appears to satisfy all of the *Tech-Bilt* factors. However, the court cannot dismiss the cross-complaint as to Cross-Defendant Michalski because it is error for a court automatically to dismiss [] a cross-complaint following a good faith settlement determination in the absence of a separate motion seeking to dispose of the cross-complaint, such as a demurrer, summary judgment or motion to dismiss. (Paragon Real Estate Group of San Francisco, Inc. v. Hansen (2009) 178 Cal. App. 4th 177, 188.)

2) MOTION OF PHIL THOMAS DULLE, JR. dba DULLE CONCRETE CONSTRUCTION FOR DETERMINATION OF GOOD FAITH SETTLEMENT PURSUANT TO CODE OF CIVIL PROCEDURE SECTION 877.6

TENTATIVE RULING: The Motion is GRANTED. The settlement reached, which includes a proposed payment of \$35,000, appears to satisfy all of the *Tech-Bilt* factors. However, the court cannot dismiss the cross-complaint as to Phil Thomas Dulle, Jr. dba Dulle Concrete Construction because it is error for a court automatically to dismiss [] a cross-complaint following a good faith settlement determination in the absence of a separate motion seeking to dispose of the cross-complaint, such as a demurrer, summary judgment or motion to dismiss. (Paragon Real Estate Group of San Francisco, Inc. v. Hansen (2009) 178 Cal. App. 4th 177, 188.)

3) DEFENDANT AND CROSS-DEFENDANT JOHN GARY HOLDER dba DR. DRYWALL'S MOTION FOR DETERMINATION OF GOOD FAITH SETTLEMENT

TENTATIVE RULING: The Motion is GRANTED. The settlement reached, which includes a proposed payment of \$50,000, appears to satisfy all of the *Tech-Bilt* factors. However, the court cannot dismiss the cross-complaint as to Defendant/Cross-Defendant Holder dba Dr. Drywall because it is error for a court automatically to dismiss [] a cross-complaint following a good faith settlement determination in the absence of a separate motion seeking to dispose of the cross-complaint, such as a demurrer, summary judgment or motion to dismiss. (Paragon Real Estate Group of San Francisco, Inc. v. Hansen (2009) 178 Cal. App. 4th 177, 188.)

.....
Melanie Rodriguez v. Balloons Above the Valley, Ltd., et al.

26-68015

MOTION TO STRIKE

TENTATIVE RULING:

Defendants Balloons Above the Valley, LLC (õBATVö) and Robert Barbarickø request for judicial notice of federal regulations with their reply is DENIED. This evidence could have been introduced with the moving papers, and the attempt to introduce new evidence with the reply is improper. Defendants also fail to cite the basis upon which the Court may take judicial notice of these regulations.

The Court has not considered the John N. Moon declaration submitted with the reply. The attempt to introduce new evidence with the reply is improper.

Defendantsø motion to strike the punitive damage allegations in paragraphs 15, 20, and 30, and paragraph 5 of the prayer for relief from the first amended complaint is GRANTED WITH LEAVE TO AMEND. Plaintiff Melanie Rodriguez alleges that Barbarick was warned not to land the hot air balloon because the ground crew could not assist in the landing. (First Amended Compl., ¶ 9.) Barbarick ignored this warning and continued to land the hot air balloon. (*Id.*) The allegations do not establish the requisite malice and despicable conduct necessary to support a claim for punitive damages. There is no allegation that it was unsafe to land the hot air balloon such that choosing to land constitutes malice and despicable conduct. There is no allegation that when the ground crew gives an instruction that failure to abide by that instruction creates an unsafe condition rising to the level of malice and despicable conduct. There is no allegation that Barbarick, as part of his training and licensing, was required to follow the instruction of the ground crew, and that failure to do so constitutes malice and despicable conduct. There is no allegation that if the ground crew could have assisted with the landing that the incident would not have occurred or would have been less likely to occur.

Rodriguez further alleges that BATV had prior knowledge of Barbarickø inability to properly pilot a hot air balloon because he did not have the proper training. (*Id.*, ¶ 15.) This is only a conclusory allegation that an officer, director, or managing agent of BATV either performed or ratified the acts complained of. There are no alleged facts to support a punitive damages prayer against a corporate defendant.

If Rodriguez elects to do so, she must file an amended pleading within 10 days of service of notice of entry of order.